

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

IN RE SERGIO G.

) 2 CA-JV 2011-0109

) DEPARTMENT B

)

) MEMORANDUM DECISION

) Not for Publication

) Rule 28, Rules of Civil

) Appellate Procedure

)

)

APPEAL FROM THE SUPERIOR COURT OF GRAHAM COUNTY

Cause No. JV5909

Honorable D. Corey Sanders, Judge Pro Tempore

AFFIRMED

Kenny Angle, Graham County Attorney
By Steven Trujillo

Safford
Attorneys for State

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Tucson
Attorney for Minor

V Á S Q U E Z, Presiding Judge.

¶1 Sergio G.,¹ born in November 1994, admitted two violations of his conditions of juvenile intensive probation in what appears to have been the ninth and tenth petitions to revoke probation arising from seven delinquency petitions filed since May 2007. In September 2011, the juvenile court revoked Sergio’s probation and ordered him committed to the Arizona Department of Juvenile Corrections (ADJC) for a minimum period of thirteen months. On appeal, Sergio challenges the disposition, contending the court abused its discretion by failing to credit him with ninety-one days he spent in custody before he was committed, and by committing him to ADJC for thirteen months.

¶2 A juvenile court has broad discretion in determining the proper disposition of a delinquent juvenile. *In re Maricopa Cnty. Juv. Action No. JV-510312*, 183 Ariz. 116, 118, 901 P.2d 464, 466 (App. 1995). Absent a clear abuse of that discretion, we will not disturb the court’s disposition order. *In re Kristen C.*, 193 Ariz. 562, ¶ 7, 975 P.2d 152, 153 (App. 1999). In the analogous context of adult sentencing, a court abuses its discretion if it acts arbitrarily or capriciously or fails to conduct an adequate investigation of relevant facts. *State v. Stotts*, 144 Ariz. 72, 87, 695 P.2d 1110, 1125 (1985).

¶3 At the pre-adjudication hearing in August 2011, Sergio’s attorney advised the juvenile court that, although Sergio had admitted to “another substance abuse violation” after having completed a sixty-day, inpatient drug treatment program, he had experienced an “awakening” and had promised that he is “done with . . . drugs.” At the disposition hearing, the probation officer responded to the court’s inquiry about available drug programs at ADJC, explaining that the available program for Sergio lasts twelve,

¹The juvenile’s name is spelled as both “Sergio” and “Serjio” throughout the record on appeal. For ease of reference, we refer to him as “Sergio.”

rather than seven, months and that, because Sergio had tested positive for methamphetamine three months after participating in a sixty-day drug rehabilitation program, a seven-month program would not be sufficient for him in any event. Defense counsel explained that a thirteen-month commitment would release Sergio in the community just as he was turning eighteen, essentially leaving him without any monitoring or support services.

¶4 Before entering the commitment order, the juvenile court noted Sergio had “violated probation repeatedly from day one” and had given “every indication to [his] probation officer that [he] did not intend to be on probation . . . [and he] intended to [game] the system until [he was] 18.” The court commented it was unwilling to place Sergio “back into a situation [in which] he has repeatedly proved to us that he has failed.” The judge also noted he had “been the judge on Sergio’s case from day one,” he had already given Sergio eighteen chances to succeed, the consensus to date was that Sergio would not succeed in drug court, and the court understood why the juvenile probation department had concluded it was “done” with Sergio. The court then committed Sergio to ADJC “for a minimum stay of 13 months in order to complete the recovery program . . . [and] recommend[ed] strongly that every possible drug treatment program be afforded to Sergio, that he be able to receive his GED [General Educational Development] in there . . . and to receive all the vocational training that we can give him.”

¶5 On appeal, Sergio argues the juvenile court violated his constitutional rights by failing to award him credit for the ninety-one days he spent in detention before his commitment to ADJC. Although Sergio did not raise this argument at the disposition hearing, arguably waiving this claim on appeal, it is without merit in any event. This court previously has ruled that juveniles are not entitled to credit for time spent in pre-

adjudication custody. *See In re Cochise Cnty. Juv. Action No. JV95000239*, 186 Ariz. 234, 236, 921 P.2d 34, 36 (App. 1996) (impossible to give credit for “time served” on unknown period of confinement, which may be as long as minor’s eighteenth birthday). Acknowledging our prior ruling, Sergio nonetheless argues “not only is the instant case distinguishable from [*Cochise County No.*] *JV95000239*, but that ruling should be revisited and overturned.” He contends our prior ruling does not apply here because his period of confinement is “known.” He so argues, despite the fact that his thirteen-month commitment could last for fourteen months until his eighteenth birthday in November 2012, a fact he appears to acknowledge. Nothing Sergio has presented persuades us that we decided *Cochise County No. JV95000239* incorrectly or that it does not apply here.

¶6 We also find inapposite Sergio’s argument that *State v. Ritch*, 160 Ariz. 495, 774 P.2d 234 (App. 1989), controls here. In that case, which we approved in *Cochise County No. JV95000239*, 186 Ariz. at 236, 921 P.2d at 36, this court held that a juvenile prosecuted and sentenced as an adult was similarly situated to an adult, and thus entitled to credit for time spent in both juvenile and adult custody before sentencing pursuant to former A.R.S. § 13-709(B).² However, because Sergio was not prosecuted or sentenced as an adult, *Ritch* does not apply.

¶7 Sergio also argues he should be resentenced because the juvenile court mistakenly believed the only drug treatment program available to him lasted twelve months, when in fact, the seven-month New Freedom program was available to him. Sergio asserts the probation officer misinformed the court that the seven-month New Freedom program is “[g]enerally . . . use[d] . . . for . . . girls,” when in fact, he has been

²Renumbered as A.R.S. § 13-712. *See* 2008 Ariz. Sess. Laws, ch. 301, § 27.

enrolled in that very program, the only program available to him, since September 2011, and hopes to complete it on time.³

¶8 The record on appeal simply does not support Sergio’s argument that the juvenile court imposed a thirteen-month term “solely because it believed (based on representations by the probation officer) that the only treatment program available to Appellant was a twelve-month recovery program,” and because he “is presumably being rehabilitated in the New Freedom program, which lasts a total of seven months.” The record shows the juvenile court committed Sergio to ADJC for several reasons in addition to participating in a drug treatment program. Notably, the court commented repeatedly on Sergio’s poor performance on probation, and expressed the hope that he would receive his GED and “all the vocational training that we can give him” while in ADJC. Moreover, the court would not have been permitted to commit Sergio to ADJC solely to receive drug treatment. *See In re Melissa K.*, 197 Ariz. 491, ¶ 13, 4 P.3d 1034, 1037-38 (App. 2000) (ADJC facilities “are not primarily drug treatment centers”).

¶9 Finally, to the extent Sergio suggests the thirteen-month commitment imposed somehow violates supreme court advisory guidelines for the commitment of minors to ADJC because a drug program of seven months was available, the record does not support this claim. *See id.* ¶¶ 14-16 (juvenile court may abuse discretion by failing to consider advisory guidelines for commitment); *see also* Ariz. Code of Jud. Admin. § 6-

³Sergio’s argument depends entirely on documents submitted as an exhibit to his opening brief. But we struck that exhibit from the record pursuant to the state’s motion, and additionally denied Sergio’s motion to expand the record on appeal. Moreover, although our order striking the exhibit was entered one week before Sergio filed his reply brief on appeal, he nonetheless continues to argue he is enrolled in the New Freedom program, a program he contends lasts seven months and is the only program available to him, arguments that, by his own admission, rely on the exhibit for support.

304(C) (“Guidelines for Commitment”). As already noted, the juvenile court did not commit Sergio to ADJC solely for drug rehabilitation.

¶10 Because the record does not establish the juvenile court abused its discretion by imposing the disposition order entered on September 13, 2011, the order is affirmed.

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge